



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: *Request that City Join Amicus Briefs for Various Pending Cases involving Issues of Concern to the City.*

MEETING DATE: June 07, 1995

PREPARED BY: Deputy City Attorney

RECOMMENDATION: That the city join amicus briefs for various pending cases with issues of concern to the city which include:

- Ehrlich v. Culver City:
- California Beverage Retailers v. Oakland:
- Loder v. Glendale.

BACKGROUND: For purposes of information, *amicus curiae* briefs are filed in various actions which involve matters of wide ranging concern to provide information and additional argument to the court.

Below is a brief overview of the cases the Council may wish to consider joining as *amicus curiae*:

- Ehrlich v. Culver City: The controversy in this case surrounds the validity of the city's art-in-public-places program as well as a recreational facilities mitigation fee. The case has been decided in the city's favor, but is on review to the California Supreme Court.

One of the issues presented is the constitutional standard by which these types of non-confiscatory exactions should be judged. The plaintiff wishes the court to apply the standard set out in Dolan v. City of Tigard. In Dolan the court held that exactions of property as conditions of development must be closely connected to the legitimate state interest sought to be furthered by the exaction and that the exaction must be roughly proportional in terms of nature and extent to the impact of the proposed development. The plaintiff in this matter would have the court extend this holding to fee exactions.

APPROVED: _____

THOMAS A. PETERSON
City Manager



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- California Beverage Retailers v. City of Oakland: This is a challenge to the city's authority to impose public nuisance related standards on existing alcoholic beverage retailers. The city also imposed a fee to fund enforcement efforts.

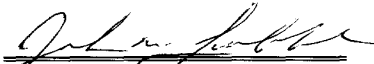
The retailers have challenged the ordinances in several respects. Currently before the court is the issue of whether state law relating to alcoholic beverages preempts the city's efforts. The city's position is that this scheme regulates conduct of patrons and proprietors and not the sale of alcoholic beverages per se.

- Loder v. City of Glendale: This case involves the validity of the city's pre-employment and pre-promotion drug and alcohol testing program. The city's policy provides for testing for every city position on the theory that each and every city employee affects the public health, safety, welfare, morals or fisc. The city did not prevail at the Court of Appeal and the matter is before the California Supreme Court.

The Court of Appeal had held that testing was only appropriate with respect to those positions whose duties involve "some special and obvious physical or ethical demand" and a compromise of the employee's ability to meet such demands could have an "immediate disastrous consequence" on the public safety or security. This is a very narrow standard.

FUNDING: Not applicable.

Respectfully submitted,


John M. Luebberke
Deputy City Attorney

APPROVED: _____

THOMAS A. PETERSON
City Manager